

1           A       You will have a good sense of it  
2   as it's developing. We recently did a  
3   contract with respect to ESPN from the ESPN  
4   news service. And so that service had a  
5   certain set of programming on it. Our field  
6   organization knows what that field  
7   organization is going to be, and they have a  
8   sense of what's going to be important. It's  
9   not -- it's not mathematical. It's a sense of  
10   what you need competitively to succeed based  
11   on the prices that are being asked.

12           Q       Was there a sense when CSN MA was  
13   dropped from Harrisburg completely, was there  
14   a sense that there was no demand for it?

15           A       As I said I wasn't that involved  
16   in it. But I think the judgment was not that  
17   there was no demand; it just wasn't worth the  
18   price.

19           Q       And what is your understanding as  
20   to why there was less demand that would make  
21   it economic or appropriate to keep it?

22           A       That there was -- well, I think

1 that that market is more of a Phillies market,  
2 the independent judgment there was that CSN  
3 Philly was a better product, or more appealing  
4 to customers in the marketplace than CSN MA.

5 Q What is your basis for that  
6 understanding?

7 A Well, it was a field judgment. I  
8 think also that the decision at that moment in  
9 time was not a decision to drop CSN Philly.  
10 That really wasn't the parameters of the  
11 discussion. The discussion was really  
12 surrounded what to do about the carriage of  
13 CSN MA, which was on a premium tier. So we  
14 had that issue to deal with. So the issue  
15 really was quite constrained. Does it make  
16 sense for the system to incur the extra cost  
17 and move CSN MA from a premium tier to  
18 expanded basic.

19 Q Were there any technological  
20 impediments to putting CSN MA on a basic  
21 widely distributed tier?

22 A May have been; I don't know. If

1 it was carried in digital moving it to  
2 expanded basic would have required analog.  
3 But I actually don't think it was on digital.

4 Q And you also don't -- well. Is it  
5 your testimony that the technological  
6 capability was not a consideration?

7 A I don't think it was. I think it  
8 was cost.

9 Q And that cost was based on demand,  
10 or lack of demand?

11 A Right.

12 Q And your sense that there was a  
13 lack of demand or diminished demand was based  
14 on what the field told you?

15 A Yes.

16 Q What exactly did they tell you?

17 A Well, I didn't have -- I wasn't  
18 involved in the discussion. But some -- this  
19 is a little bit third hand, but I think what  
20 was said was, we don't want to move into  
21 expanded basic at this price; that will have  
22 a substantial increase in cost to us and it's

1 not worth it to us.

2 Q Now at that time there was no  
3 contract with CSN MA, correct?

4 A Yes.

5 Q Could you have negotiated a lower  
6 price?

7 A I think we actually did see if  
8 there was some accommodation. I think there  
9 was a brief conversation about it. But I  
10 think CSN MA said, you know, this is our rate  
11 structure. We need to be on expanded basic.

12 Q Would you have been a party to  
13 those conversations had there been a  
14 negotiation about price?

15 A If they went somewhere, if they  
16 got serious.

17 Q And essentially in a situation  
18 like that Comcast would be negotiating with  
19 itself for all intents and purposes?

20 A Yes.

21 Q I'm going to fast forward to  
22 August, 2006 for a moment. After a lot of

1 negotiations, Comcast entered into an  
2 arrangement, an affiliation agreement with  
3 MASN, correct?

4 A Yes.

5 Q And after a lot of internal  
6 negotiations Schedule A was created, correct?

7 A Yes.

8 Q And then in 2007 when MASN  
9 determined that it was not being carried in  
10 all the markets it thought it was being  
11 carried on, it requested Comcast to carry it  
12 on those additional markets, the disputed  
13 markets, correct?

14 A Yes.

15 Q And Comcast said no, correct?

16 A No. We engaged in -- I was  
17 willing, even though the contract was crystal  
18 clear, I was then and still am willing to  
19 engage in discussions about it. So we had a  
20 lengthy series of discussions about launching  
21 in some portion of these, and on some terms,  
22 in these specific territories. I was not

1     unwilling.

2           Q       Now that you brought up the  
3     subject of negotiations, are there any  
4     technical impediments that you are aware of  
5     today as you sit here that would prevent  
6     Comcast from carrying MASN on the three  
7     disputed markets?

8           A       We would have to make room for  
9     them. We would have to make room -- we would  
10    have to do something in the systems to create  
11    the channel capacity to launch it.

12          Q       Is that feasible?

13          A       It's difficult but feasible;  
14    depending on the system.

15          Q       So it's not impossible?

16          A       It's not impossible. It may be in  
17    some systems, or very very low bandwidth and  
18    not rebuilt, it could be, maybe even  
19    contractually impossible. There may be  
20    nothing that we have the rights to move.

21          Q       Let's talk about Harrisburg in  
22    particular. Are you aware of any technical

1 impediments as you sit here today that would  
2 prevent Comcast from carrying MASN?

3 A We would have to make room for it  
4 in Harrisburg as well.

5 Q If MASN presented a terms and  
6 conditions that were acceptable to Comcast is  
7 it possible that Comcast would carry MASN in  
8 the three disputed markets?

9 A Yes.

10 Q And those terms and conditions  
11 would include reduced price from [REDACTED]?

12 A Yes.

13 Q Has Comcast added markets for MASN  
14 that were not included in Schedule A?

15 A Yes.

16 Q And why did it to do so to your  
17 knowledge?

18 A The local systems decided that  
19 they needed it, that they needed the product;  
20 that it was worth the price.

21 Q Could you turn to MASN Exhibit No.  
22 104.

1 A Yes.

2 Q That's that email string.

3 A Yes, I have it.

4 Q You have that email in front of  
5 you?

6 A I'm looking at it.

7 Q And on page one near the bottom  
8 there is an email from you to Alan Dannenbaum  
9 dated July 29.

10 A Yes.

11 Q And you state there, you say, one,  
12 we will only launch in the Washington and  
13 Baltimore DMAs is too restrictive; do you see  
14 that?

15 A I do see that.

16 Q When you wrote that, who were you  
17 implying that it was too restrictive for, you  
18 or MASN?

19 A MASN.

20 Q What was your understanding about  
21 what MASN was seeking?

22 A Well, they were seeking as much



1 committed distribution as they could get. And  
2 we were entering into this negotiation with  
3 them, and I felt that making a proposal to  
4 them to just launch in Washington and  
5 Baltimore wouldn't be constructive to get to  
6 a deal.

7 Q Did you have any understanding as  
8 to whether MASN was seeking coverage of  
9 markets or coverage by subscriber, the number  
10 fo subscribers?

11 A I think the latter. They were  
12 very interested in making sure that Washington  
13 and Baltimore were covered.

14 Q Do you specifically recall during  
15 any negotiations with the folks at MASN that  
16 they were interested in the numbers of  
17 subscribers as opposed to the markets that  
18 would be included?

19 A What I recall was the discussions  
20 we had with them were really centered around  
21 the total subscriber numbers. And we reached  
22 an agreement on that with respect to when they

1 would be rolled out as to the number. We said  
2 we'll launch this number of subs by X date,  
3 and we'll launch this number of subs by Y  
4 date, and then we provided the list that put  
5 that altogether.

6 Q And the reason I ask this is  
7 because over the course of many days now we've  
8 heard a lot of discussion about the need for  
9 subs and the need for markets. And I'm  
10 wondering if Comcast was coming into the  
11 negotiations with the idea that we have to  
12 satisfy a certain number of subs or restrict  
13 a certain number of subs. And MASN was coming  
14 to negotiations not with subs in mind but with  
15 communities or systems in mind. Two different  
16 things, apples and oranges.

17 Did you get that sense at all,  
18 that there was a discrepancy in what the two  
19 sides were looking at or focusing on?

20 A No.

21 Q So in your mind as you recall both  
22 sides were interested in subscribers, the

1 numbers of subscribers?

2 A Yes, other than obviously their  
3 interest in being launched in Washington-  
4 Baltimore, the core market.

5 Q Do you recall anyone from MASN  
6 mentioning, you know, we want the core areas,  
7 Baltimore and Washington. And as to the other  
8 areas that's negotiable?

9 A Not specifically, but we were  
10 engaged in a negotiation as to what the launch  
11 commitment would be. But I think it's  
12 accurate how you describe it. They were  
13 interested in getting distribution in  
14 Washington-Baltimore, and then we were  
15 negotiating what would be launched outside of  
16 Washington-Baltimore.

17 Q Was it your understanding that  
18 MASN was seeking 100 percent coverage of the  
19 territory?

20 A Well, in their first proposal  
21 that's what they were seeking; but that isn't  
22 what we agreed to.

1           Q       I know you didn't agree to that  
2 ultimately, or it's your position you didn't  
3 agree to that ultimately. But do you recall  
4 anyone from MASN saying, or something to the  
5 effect, we are seeking 100 percent coverage of  
6 the territory?

7           A       I have no recollection of that.

8           Q       Nothing to that effect?

9           A       No.

10          Q       Just to be clear, was it your  
11 understanding that they were seeking 100  
12 percent coverage?

13          A       It was in the contract or form  
14 contract that they sent over, which we marked  
15 up. But I don't recall them ever saying we  
16 must have full distribution.

17          Q       And when Comcast came back to the  
18 table and presented a proposal that included  
19 less than 100 percent coverage, was it made  
20 clear to MASN that this proposal was for less  
21 than 100 percent coverage?

22          A       I don't recall specifically

1 saying, oh, this is less than 100 percent.

2 Q Anything to that effect?

3 A Yes, I think we said to them,  
4 these are the subs that we are willing to  
5 launch on. We sent them back a document. We  
6 struck the words, all markets. We said  
7 Schedule A, Exhibit A. And then we added a  
8 sentence that said, any other launches are at  
9 our discretion. So we were clearly saying  
10 that we weren't launching to all customers.  
11 We said we are going to have a subscribe  
12 launch list. We are going to launch this  
13 number of subs. And then we attach the  
14 exhibit A that had that number of subs on it,  
15 so it was clearly a constrained list of  
16 markets.

17 Q Now I think when Mr. Frederick was  
18 asking you questions earlier, he asked you if  
19 you recalled any discussions with anyone from  
20 MASN that the proposal was less than 100  
21 percent. I'm not sure if he asked in those  
22 exact terms, but something to that effect. Do

1     you recall that?

2             A       Yes.

3             Q       I conveniently forgot my question.

4                     (Laughter)

5                     I'll have to move on.  Maybe it  
6     will come back, sorry.

7                     JUDGE SIPPEL:  Negotiations, you  
8     are talking about systems, you are talking  
9     about areas, but what about the price?  I mean  
10    did that come up?

11                    THE WITNESS:  Yes, we negotiated  
12    a discount on the price as well.  So the deal  
13    had a reduced fee than what their proposal  
14    was, and it had a constrained launch  
15    requirement, constrained in two ways.  It was  
16    constrained in terms of the number of systems.  
17    And it was also constrained in terms of  
18    timing.  There was an initial launch  
19    obligation as an initial group of systems.  
20    Then we could wait awhile to launch another  
21    tranche.  And then there was a third tranche  
22    after that.

1                   So there were -- those were the  
2 ways in which we were trying to minimize the  
3 financial impact.

4                   JUDGE SIPPEL:    So if they wanted  
5 -- if they specifically said, well, we want to  
6 be launched in Harrisburg. And at that time  
7 you had in mind, well, you weren't going to  
8 launch in Harrisburg; is that right?

9                   THE WITNESS:    Yes, that's  
10 correct.

11                  JUDGE SIPPEL:    It's just that  
12 nobody ever said it in those words, at the  
13 negotiations?

14                  THE WITNESS:    I think if they had  
15 asked for it, we would have said no.

16                  JUDGE SIPPEL:    Unless they moved  
17 on the price?

18                  THE WITNESS:    Yes. I suppose an  
19 -- yes, absolutely, an agreement could have  
20 been reached on Harrisburg.

21                  MR. SCHONMAN:    I remembered my  
22 question.

1 JUDGE SIPPEL: I'm glad, because  
2 I'm forgetting mine.

3 BY MR. SCHONMAN:

4 Q Mr. Frederick had asked you  
5 questions about whether you had discussions  
6 with the MASN negotiators that you were  
7 proposing something less than 100 percent  
8 coverage. And I think you responded that you  
9 couldn't recall.

10 We now know in hindsight that the  
11 markets that were omitted from Schedule A were  
12 of great concern to MASN. Do you recall any  
13 reaction from negotiators at MASN regarding  
14 the fact that the coverage was less than 100  
15 percent?

16 A No, they agreed to it. They  
17 agreed to the sub number. They agreed to the  
18 changes in the contract.

19 Q So there was no reaction that you  
20 recall?

21 A No.

22 Q And the reason I ask is because if



1 that had been mentioned to them I'm assuming  
2 that they would have reacted vigorously  
3 against that idea.

4 A I suppose.

5 Q And you don't recall any reaction  
6 at all?

7 A No.

8 Q You have before you MASN Exhibit  
9 104 we talked about a moment ago?

10 A Yes.

11 Q I'm going to go back to that.

12 On the very top there is a  
13 reference to your request to see a list of all  
14 the systems in the MASN service area.

15 A Yes.

16 Q And if I recall your testimony you  
17 don't recall ever receiving that. Is that  
18 correct?

19 A Yeah, well, I think actually  
20 subsequently when Mr. Frederick showed me 106,  
21 that may actually be the list.

22 Q MASN Exhibit No. 106 is the list

1 of service area?

2 A That may be -- and this is a bit  
3 of speculation here -- I don't recall the list  
4 that Jen prepared; I don't recall that as a  
5 specific document. But just looking at the  
6 chronology of emails here, oh actually the one  
7 is at 4:00 in the morning.

8 Q Well, let me point this out, maybe  
9 this will help. In MASN Exhibit 104 you are  
10 asking for a list of the systems in the MASN  
11 service area.

12 A Yes.

13 Q But in MASN Exhibit 106 you are  
14 receiving information about the number of  
15 subs.

16 A Yes.

17 Q So there may be a disconnect here,  
18 and I'm not following. Is a list of subs what  
19 you were looking for, or a list of systems  
20 that you were seeking?

21 A I would have been looking for  
22 both.

1           Q       And if I recall your testimony  
2   earlier you don't recall receiving a list of  
3   the systems in MASN service area, is that  
4   correct?

5           A       That's correct.

6           Q       Did you consider this list of  
7   systems to be a critical element in  
8   formulating your negotiations as you went to  
9   the table with MASN?

10          A       Well, more so the sub numbers, sub  
11   numbers and financial impact than the actual  
12   systems; the two are related obviously.

13          Q       Well, to what extent if you have  
14   any sense would the list of systems have been  
15   important to your negotiations? You did ask  
16   for them.

17          A       Yes, it was really, what I was  
18   doing here was trying to find the parameters  
19   of the discussion, and attempting to get to a  
20   deal with MASN. So beyond simply saying  
21   launching in Washington-Baltimore. So there  
22   are a number of systems outside of Washington-

1 Baltimore, so the negotiation was how many  
2 subs we would launch in that area, and where  
3 we would launch.

4 And so I was trying to get as much  
5 information as I could to go into this  
6 negotiating period.

7 Q When you requested Jen Gaiski to  
8 prepare a list of systems for you for the MASN  
9 service area, did you have any understanding  
10 as to how long it would take for that list to  
11 be prepared?

12 A No, I didn't.

13 Q Did you believe it could be  
14 prepared in a day or two?

15 A Would have been a stretch,  
16 frankly.

17 Q How long do you think it would  
18 have taken to prepare that list?

19 A A few days, probably.

20 Q Few days?

21 A Yes.

22 Q You had discussions in 2007 with

1 MASN, correct, about possibly adding the  
2 additional disputed areas?

3 A Yes.

4 Q And did you or others in Comcast  
5 work with MASN to prepare a list of the  
6 systems in MASN's service area?

7 A Yes.

8 Q How long did that take?

9 A Oh, it actually went back and  
10 forth quite a bit. There were a lot of minor  
11 tweaks and changes to it.

12 Q That took about a year, didn't it?

13 A Yes. I mean it was mostly done.  
14 There were small changes here and there. It  
15 took a long time.

16 Q Why would that list have taken  
17 about a year, but you anticipated that Jen  
18 Gaiski would prepare essentially a similar  
19 list in just a matter of days.

20 A Well, I think that when we worked  
21 on the system list in the discussions that you  
22 are talking about it would have been what I

1 was describing. And then over time as the  
2 discussions with MASN evolved there were small  
3 tweaks to it.

4 So she would have prepared a  
5 system list in a couple of days, perhaps there  
6 might have been small systems left off that as  
7 well. But it would have been certainly in  
8 these key areas, Harrisburg, Roanoke, Tri-  
9 Cities, all would have been included.

10 Q So you anticipated that the list  
11 that Jen Gaiski, that you asked Jen Gaiski to  
12 prepare was going to be not necessarily a  
13 complete list?

14 A It might have been imperfect,  
15 slightly imperfect.

16 Q And in order to get a complete  
17 list would have taken considerably more time?

18 A Oh, I don't know how long it would  
19 have taken. The discussions with MASN were so  
20 long and drawn out, we weren't working on it  
21 for a whole year. Some of it requires  
22 information from MASN, how big their territory

1 is.

2 Q Sorry to keep flip-flopping back  
3 and forth. Let's go back to August of 2006  
4 and the contract negotiations. And I want to  
5 -- I'd like to touch on the subject of  
6 overflow. Are you familiar with that?

7 A Yes.

8 Q What is your understanding of what  
9 overflow is?

10 A If there are games scheduled on an  
11 RSN that are conflicting, you need to have a  
12 second channel to put games on.

13 Q The contract, the August 2006  
14 contract, contemplates two channels, MSN and  
15 MSN-1, is that correct?

16 A Yes.

17 Q Was that something that Comcast  
18 required, or something that MSN required?

19 A MSN required it.

20 Q MSN wanted two channels?

21 A Yes.

22 Q Do you have any understanding why?

1           A       Because of the overflow situation.

2           Q       Did the fact that MASN insisted on  
3   having two channels in the contract, did that  
4   affect the negotiations at all?

5           A       I don't think materially. It  
6   obviously increased the bandwidth issues, the  
7   amount of bandwidth we'd have to dedicate to  
8   it, but I don't remember it being material in  
9   the conversations that I had.

10          Q       At that time, August, 2006, could  
11   the -- could Comcast's Harrisburg system have  
12   accommodated both channels, do you know?

13          A       I don't know. My bet is they  
14   would have had to move something off the  
15   system.

16               MR. SCHONMAN: I don't have any  
17   other further questions, Your Honor.

18               JUDGE SIPPEL: That leaves  
19   redirect.

20               MR. TOLLIN: Just a few  
21   questions.

22   REDIRECT EXAMINATION BY COUNSEL FOR COMCAST



1 BY MR. TOLLIN:

2 Q Using Mr. Schonman's child-parent  
3 example, I would just like to -- so that maybe  
4 the Court understands better the  
5 organizational structure of Jeff Shell's  
6 content group and your distribution group.

7 Aren't you both siblings as we  
8 would call it, not parent companies?

9 A Yes, I think that is a better  
10 characterization.

11 Q You are both siblings? So and if  
12 MASN were in the same position as CSN MA, they  
13 would be a sibling, right, not a parent?

14 A I'm sorry, if MASN were in the  
15 same position?

16 Q Yeah, if you put MASN in -- if you  
17 substituted MASN for CSN MA, wouldn't they be  
18 a sibling?

19 A Yes.

20 Q Okay. Did Jeff Shell's content  
21 group play any role in the 2006 carriage  
22 negotiations with MASN?